

EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

Civil Action No.: 3:23-cv-00245-MOC-DCK

SOMERO ENTERPRISES, INC.,

Plaintiff

v.

**TOPP & SCREED S.A. and INDUSTRIAL
FLOOR CONSULTING, INC.,**

Defendants.

**Affidavit of Jack Cooney in Support of Plaintiff's Opposition to
Defendants' Motion to Stay**

I, Jack Cooney, hereby declare as follows:

1. I am the Chief Executive Officer at Somero Enterprises, Incorporated ("Somero").

I have been working at Somero for 26 years and I have personal knowledge of Somero's business, as well as the market for concrete laser screeds and companies in the relevant field.

2. Beginning in 1986, Somero pioneered the design, development, manufacture, and use of laser-guided concrete screeding machines. Since then, Somero has led the market with continued innovation, growing its product offering from the single, original Laser Screed® to its current portfolio of close to 20 products.

3. Somero protects its investment in innovative and proprietary designs with a portfolio of 96 patents and pending patent applications.

4. This portfolio of patents gives Somero a competitive advantage in the field.

5. One of Somero's patents is U.S. Patent No. 8,038,366, which incorporates laser concrete screed technology.

6. The market for laser concrete screeds is specialized and narrow, with limited players in the relevant field.

7. Concrete laser screeds can range anywhere from \$100,000 to \$600,000 in the United States.

8. Until recently, Topp & Screed did not have a significant presence in the market for concrete laser screeds.

9. Now, Somero and Topp & Screed (and Industrial Flooring Consulting, Inc. as a seller) (collectively “Defendants”) are direct competitors of Somero.

10. Counsel for Somero first notified Topp & Screed of its infringement in January 2023.

11. Somero stands to lose sales and customer relationships if Defendants’ infringement continues.

12. Customer relationships are integral to Somero’s long-term success and any loss of such relationships would cause irreparable harm to Somero.

13. To avoid this harm, Somero must be permitted to enforce its patent against Defendants.

14. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 13, 2023

Jack Cooney
Chief Executive Officer
Somero Enterprises, Inc.

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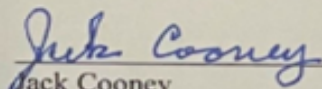
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